IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Pannaram Versus State of Rajasthan

S.B.CRIMINAL MISC. PETITION NO. 65/2000 against the Order dated 02.12.1999 passed by Special Judge, SC/ST Cases, Merta in Criminal Revision No. 46/99.

Date of Order : 03/07/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. G.R.Punia }
Mr. R.S.Choudhary } for the petitioner.
Mr. Ashok Upadhyay, public prosecutor for the State.

BY THE COURT:-

By the instant criminal misc. petition, the petitioner has challenged the order dated 02.12.1999 passed by Special Judge, SC/ST Act Cases, Merta (for short 'the revisional court' hereinafter) in Criminal Revision No. 46/99, whereby the revisional court dismissed the revision petition filed by the petitioner against the order dated 26.8.98 passed by Judicial Magistrate, Degana (for short 'the trial court' hereinafter).

I have heard learned counsel for the parties. Carefully gone through the order passed by the revisional court as also of the trial court.

The only point argued by learned counsel for the petitioner is that a complaint was filed by Shri K.C.Gaur, the then Munsif and Judicial Magistrate, Degana against the accused petitioner. He being the complainant took the cognizance of the offences and proceeded against the petitioner and therefore, the order impugned is bad in law. He has relied on a decision of this Court in Uma Kant Bhatt Vs. The State of Rajasthan, 1992 Cr.L.R. (Raj.) 491 wherein this Court held as under :-

> "Section 352 of the Code of Criminal Procedure provides that except as provided in Sections 344, 345, 349 and 350 Cr.P.C., no Magistrate shall try any person for any offence referred to in Section 195 Cr.P.C. when such offence is committed before himself or in the contempt of his authority or is brought to his notice as such as a Judge or a Magistrate in the course of a judicial proceeding. The mischief, which is sought to be prevented by Section 352 Cr.P.C. is that the person, who has prejudged the matter and filed the complaint, should not decide the same. It is a fundamental rule of administration of justice that a person cannot be a judge in his own cause and where a judge is interested in the result of a cause then he cannot sit in a judgment upon it. The Legislature, by making provisions, can make a man Judge in his own cause, though it may be contrary to the general rules, but in the absence of any statutory authority or the operation of necessity, no man can be a judge in his own cause. A person having a direct interest in the subject matter of the inquiry, cannot take part in

> adjudicating upon it. No man can be at one time be a Judge and a suiter. The maxim MEMO DEBT ESSE JUKX IN PROPRIA SUA CAUSE, i.e. no man can be a Judge in his own cause, is a secred maxim and precludes the Judge who is interested in the subject-matter of a dispute, from acting as a Judge therein. In judicial proceedings, justice must not only be done but it should appear to have been done and the trial must not leave any room for a reasonable apprehension in the mind of the litigant for assuming a possibility of bias. The offences in the present case are covered by Section 195 Cr.P.C. and do not fall under any of the Exception. Prohibition provided under Section 352 Cr.P.C. is an absolute and a Magistrate, whose order has been disobeyed and who has filed the complaint, cannot try the person guilty of disobedience of his own order. In the present case, Shri H.R.Kudi, Munsif and Judicial Magistrate himself was a complainant and he himself took cognizance against the accused by its order dated June 17, 1987, and, therefore, the order taking cognizance against the petitioner deserves to be quashed and set aside."

This Court while setting aside the order taking cognizance therein, remanded the matter to the Munsif and Judicial Magistrate to proceed in accordance with law. It was also observed that since Shri H.R.Kudi has already been transferred and some other judicial officer is working as the Munsif and Judicial Magistrate, First Class, Begun, so the matter can be proceeded under law and the order passed in this miscellaneous petition will not come to the way of the Magistrate to take or not to take the cognizance or to proceed with the trial because the prohibition is personal and does not refer to the office of the Magistrate.

The facts of the instant case are almost identical to that of Uma Kant's case (supra). In Uma Kant's case, Shri H.R.Kudi, Munsif and Judicial Magistrate filed a complainant and he himself took the cognizance against the petitioner therein. In the instant case, Shri K.C.Gaur, Munsif and Judicial Magistrate, Degana filed a complaint against the petitioner and he himself took the cognizance of the offence. In this view of the matter, on the point urged, this criminal misc. petition deserves to be allowed.

Consequently, the criminal misc. petition is allowed. The order dated 26.8.98 passed by the Judicial Magistrate, Degana as also the order dated 02.12.99 passed by revisional court affirming the order dated 26.8.98, are set aside and the matter is remanded to the Judicial Magistrate, Degana to proceed in accordance with law. Since Shri K.C.Gaur has already been transferred and some other judicial officer is working as Judicial Magistrate, Degana, so the matter can be proceeded under law and the order passed in this miscellaneous petition will not come in the way of the Magistrate to take the cognizance or to proceed with the trial because the prohibition is personal and does not refer to the office of the Magistrate.

(H.R.PANWAR),J.

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